IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
March 9, 2005 Session

STATE OF TENNESSEE v. WALTER WILLIAMS, JR.

Direct Appeal from the Circuit Court for Humphreys County
No. 10600 Robert E. Burch, Judge

No. M2004-01781-CCA-R3-CD - Filed June 22, 2005

The appellant, Walter Williams, Jr., pled guilty in the Humphreys County Circuit Court to driving under the influence (DUI), fourth offense, a Class E felony, and driving on a revoked license, a Class B misdemeanor. For the DUI conviction, the trial court sentenced the appellant to one year in jail, to be suspended after serving one hundred fifty days in jail, imposed a three thousand dollar fine, and suspended the appellant's driver's license for five years. For the driving on a revoked license conviction, the trial court sentenced the appellant to six months, to be suspended after serving two days in jail. The trial court ordered that the sentence for the driving on a revoked license conviction be served consecutively to the sentence for DUI. Pursuant to the plea agreement, the appellant reserved the right to appeal a certified question of law challenging the trial court's denial of his motion to suppress. Upon review of the record and the parties' briefs, we affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court is Affirmed.

NORMA MCGEE OGLE, J., delivered the opinion of the court, in which JOHN EVERETT WILLIAMS, J., joined. JOSEPH M. TIPTON, J., concurring in results only.

Charles S. Kelly, Sr., Dyersburg, Tennessee, for the appellant, Walter Williams, Jr.

Paul G. Summers, Attorney General and Reporter; Richard H. Dunavant, Assistant Attorney General; Dan Mitchum Alsobrooks, District Attorney General; and Lisa Donegan, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

On January 25, 2003, Deputy Brian Baker of the Humphreys County Sheriff's Department was in the department's central communications office when a telephone call came in to dispatch about 11:00 p.m. Charles Richen reported to the dispatcher that the appellant and Mr. Richen's daughter had gotten into a domestic dispute, and the appellant had followed her to Mr. Richen's home on Sherwood Avenue in Waverly, Tennessee. According to Mr. Richen, the appellant was

driving a white Ford Ranger pickup truck with a Shelby County license plate. Deputy Baker understood the appellant to be at Mr. Richen's home at the time of the call.

Deputy Baker immediately left the communications office and went on patrol. Within five minutes of Mr. Richen's call, Deputy Baker, who was traveling west on Main Street, saw a white Ford Ranger traveling east and coming from the direction of Sherwood Drive. The truck turned left onto Highway 13, and Deputy Baker turned right and began following the truck. Deputy Baker saw that the truck had a Shelby County license plate and decided to stop the truck in order "to investigate and see if there was any further acts of domestic [violence] that had occurred." He activated his blue lights but the truck continued for approximately one-half mile before stopping. Deputy Baker approached the truck and asked its driver, who was the appellant, for his driver's license. The appellant told Deputy Baker that he did not have a license, and Deputy Baker asked him to step out of the truck. The appellant told Deputy Baker that he and his girlfriend had gotten into an argument in Clarksville and that he had followed his girlfriend to her parents' home in Waverly. As the appellant was talking, Deputy Baker noticed a strong odor of alcohol, that the appellant's eyes were red, and that his speech was very slurred. Deputy Baker gave the appellant four field sobriety tests, which the appellant performed "poorly." He arrested the appellant for DUI and driving on a revoked license.

At the suppression hearing, Deputy Baker testified on cross-examination that he did not hear Mr. Richen's actual call to the dispatch office. He stated that when he stopped the appellant's truck, the appellant had not broken any traffic laws. He said that as soon as the appellant got out of the truck, he smelled alcohol and asked the appellant if he had been drinking. Deputy Baker related that the appellant was not under arrest at that time and that he had not given the appellant Miranda warnings. After Deputy Baker administered the field sobriety tests, he took the appellant to the sheriff's department, and the appellant agreed to take a breathalyzer test. After waiting twenty minutes, the appellant refused to take the breathalyzer test, but agreed to take a blood test. Deputy Baker took the appellant to a hospital emergency room, where his blood was collected. Deputy Baker could not recall the results of the blood test.

No other witnesses testified at the suppression hearing, but the defense introduced several documents into evidence. According to the general sessions warrant filled out by Deputy Baker, Deputy Baker stopped the appellant "for domestic investigation." The defense also introduced into evidence the incident report typed by the dispatcher at the time of Mr. Richen's call. The report names Mr. Richen as the caller and provides,

> CALLER ADVISED HIS DAUGHTER HAD BEEN BEATEN UP BY HER BOYFRIEND IN CLARKSVILLE WALTER WILLIAMS HE HAS NO DL AND IS INTOXICATED 5'9" STOCKY WHITE MALE IS IN A WHITE FORD RANGER 95 WITH SHELBY COUNTY TAGS GAVE TO CITY UNITS SEE INCIDENT NUMBER 0301001526[.]

In denying the appellant's motion to suppress, the trial court noted that Deputy Baker had information that the appellant was driving while intoxicated and "had specific articulable facts to investigate this domestic [dispute] and had a right to initiate a Terry Stop to . . . determine the situation." The trial court also noted that the information was provided by a reliable citizen informant, that Deputy Baker was able to corroborate the information before the stop, and that Deputy Baker had a duty to investigate. The trial court denied the appellant's motion to suppress.

II. Analysis

The appellant claims that the trial court erred by denying his motion to suppress his statements to police, the results of his field sobriety tests, and the results of his blood test. He contends that Deputy Baker did not observe him breaking any traffic laws, and, therefore, had no reasonable suspicion to stop him. He argues that because the stop was illegal, any evidence obtained as a result of that illegal stop must be suppressed. In addition, he argues that the trial court should have suppressed his statements to Deputy Baker because Deputy Baker failed to read him Miranda warnings after the stop. The State argues that the trial court properly denied the motion to suppress. We agree with the State.

In reviewing a trial court's determinations regarding a suppression hearing, "[q]uestions of credibility of the witnesses, the weight and value of the evidence, and resolution of conflicts in the evidence are matters entrusted to the trial judge as the trier of fact." State v. Odom, 928 S.W.2d 18, 23 (Tenn. 1996). Thus, "a trial court's findings of fact in a suppression hearing will be upheld unless the evidence preponderates otherwise." Id. Nevertheless, appellate courts will review the trial court's application of law to the facts purely de novo. See State v. Walton, 41 S.W.3d 75, 81 (Tenn. 2001). Furthermore, the State, as the prevailing party, is "entitled to the strongest legitimate view of the evidence adduced at the suppression hearing as well as all reasonable and legitimate inferences that may be drawn from that evidence." Odom, 928 S.W.2d at 23.

Both the Fourth Amendment to the United States Constitution and Article 1, Section 7 of the Tennessee Constitution prohibit unreasonable searches and seizures by law enforcement officers. The purpose of the Fourth Amendment and Article 1, Section 7 is to "'safeguard the privacy and security of individuals against arbitrary invasions of government officials.'" State v. Munn, 56 S.W.3d 486, 494 (Tenn. 2001) (quoting State v. Bridges, 963 S.W.2d 487, 490 (Tenn. 1997)); see also State v. Downey, 945 S.W.2d 102, 106 (Tenn. 1997). Consequently, "'a warrantless search or seizure is presumed unreasonable, and evidence discovered as a result thereof is subject to suppression unless the State demonstrates that the search or seizure was conducted pursuant to one of the narrowly defined exceptions to the warrant requirement.'" State v. Binette, 33 S.W.3d 215, 218 (Tenn. 2000) (quoting State v. Yeargan, 958 S.W.2d 626, 629 (Tenn. 1997)); Coolidge v. New Hampshire, 403 U.S. 443, 454-55, 91 S. Ct. 2022, 2032 (1971).

The United States Supreme Court announced one such exception to the warrant requirement in Terry v. Ohio, 392 U.S. 1, 21, 88 S. Ct. 1868, 1880 (1968), holding that a law enforcement officer may conduct a brief investigatory stop if the officer has a reasonable suspicion based upon specific

and articulable facts that a criminal offense has been, is being, or is about to be committed. See State v. Keith, 978 S.W.2d 861, 865 (Tenn. 1998). In determining whether an officer has a reasonable suspicion based upon specific and articulable facts, a court should consider the totality of the circumstances, including, but not limited to, "the officer's personal objective observations, information obtained from other police officers or agencies, information obtained from citizens, and the pattern of operation of certain offenders." Yeargan, 958 S.W.2d at 632; United States v. Cortez, 449 U.S. 411, 417-18, 101 S. Ct. 690, 695 (1981).

> "Reasonable suspicion is a less demanding standard than probable cause not only in the sense that reasonable suspicion can be established with information that is different in quantity or content than that required to establish probable cause, but also in the sense that reasonable suspicion can arise from information that is less reliable than that required to show probable cause."

State v. Pulley, 863 S.W.2d 29, 32 (Tenn. 1993) (quoting Alabama v. White, 496 U.S. 325, 330, 110 S. Ct. 2412, 2416 (1990)).

If a stop is based upon an informant's tip, the factors set forth in State v. Jacumin, 778 S.W.2d 430, 436 (Tenn. 1989), are used to determine whether the informant's tip established probable cause. State v. Pulley, 863 S.W.2d 29, 31 (Tenn. 1993). In Jacumin, 778 S.W.2d at 436, our supreme court espoused the two-pronged test of Aguilar v. Texas, 378 U.S. 108, 84 S. Ct. 1509 (1964), and Spinelli v. United States, 393 U.S. 410, 89 S. Ct. 584 (1969). According to Aguilar, there must be a "basis of knowledge" when an officer relies on an informant's tip. The test also requires a showing that the informant is credible or the information is reliable. "[I]ndependent police corroboration of the information provided by the informant may make up deficiencies in either prong." State v. Powell, 53 S.W.3d 258, 263 (Tenn. Crim. App. 2000). However, if the informant is a known citizen as opposed to a criminal or professional informant, the two-pronged Jacumin test does not apply. See id. Instead, information supplied by a known citizen informant is presumed to be reliable. State v. Melson, 638 S.W.2d 342, 354-56 (Tenn. 1982). Moreover, our court has concluded that "[a]n officer may make an investigatory stop based upon a police dispatch as long as the individual or agency placing the dispatch has the requisite reasonable suspicion supported by specific and articulable facts that indicate criminal conduct." State v. Luke, 995 S.W.2d 630, 636 (Tenn. Crim. App. 1998).

In the present case, the dispatcher's incident report shows that Charles Richen reported to the dispatcher at 11:08 p.m. that the appellant had beaten his daughter, was driving without a license, and was intoxicated. Mr. Richen also reported the make, model, and year of the vehicle the appellant was driving and that the vehicle had a Shelby County license plate. This information was presumed to be reliable. See id. at 637 (providing that although the name of the citizen informant alone is not enough for reliability to be presumed, the known citizen informant will be deemed reliable if "information about the citizen's status or his or her relationship to the events or persons involved" is present). Within five minutes of the call, Deputy Baker saw a white Ford Ranger pickup truck

with a Shelby County license tag traveling from the direction of Mr. Richen's house. Given Mr. Richen's report to the dispatcher that the appellant had beaten his daughter, had no driver's license, and was intoxicated, and Deputy Baker's corroboration of the vehicle information, we conclude that Deputy Baker could make an investigatory stop.

The appellant also claims that Deputy Baker interrogated him without reading him Miranda warnings. According to the appellant's brief, the appellant told Deputy Baker that he had consumed three or four beers. However, from the record it is not clear regarding when the appellant made this statement. Deputy Baker testified at the suppression hearing that he approached the appellant's truck and asked the appellant if he had been drinking. According to the State's argument to the trial court during the suppression hearing, the appellant answered that he had consumed three or four beers. However, at the hearing, Deputy Baker did not testify that the appellant made such a statement and the statement does not appear in any of the exhibits introduced during the hearing. In any event, given that the appellant was not in custody when Deputy Baker approached the truck and asked the appellant if he had been drinking, there is no merit to the appellant's claim that the deputy improperly questioned him without having read the Miranda warnings. See Berkemer v. McCarty, 468 U.S. 420, 104 S. Ct. 3138 (1984) (providing that persons detained temporarily for a traffic stop, even one investigating intoxication, are not "in custody" for the purposes of Miranda); see also State v. Roger Odell Godfrey, No. 03C01-9402-CR-00076, 1995 Tenn. Crim. App. LEXIS 226, at *5-7 (Knoxville, Mar. 20, 1995) (relying on Berkemer and holding that a police officer's investigating an accident and asking a defendant whether he had been drinking did not violate Miranda).

III. Conclusion

Based upon the record and the parties' briefs, we affirm the judgment of the trial court.

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NORMA McGEE OGLE, JUDGE